

Appln. No. 09/842,458
Proposed Amendment for Discussion Only

Arguments/Remarks

As of the Office action mailed December 23, 2003 claims 1-10 are pending with claims 8-10 withdrawn, and claims 1-7 stand rejected.

Rejections Under 35 U.S.C. §112

Claim 2 has been rejected under 35 U.S.C. §112, first paragraph, because the insertion of "on the Shore A scale" was deemed to be new matter. Applicant maintains that it would have been understood by a person having skill in the art that the Shore A scale would have been the appropriate durometer scale considering the claimed numerical range and the stated requirements of the septum in the specification. However, in the interest of expediting prosecution, Applicant is willing to cancel claim 2, thereby rendering the rejection moot. Correspondingly, the insertion of "on the Shore A scale", added in the paragraph beginning on page 7, line 19 of the specification by the amendment filed September 24, 2003, should also be cancelled.

Claim 7 was rejected under 35 U.S.C. §112, second paragraph, because "said ports" lacks proper antecedent basis. As the Examiner recognized, the second occurrence of "said ports" was inadvertently overlooked in the previous amendment. Claim 7 should be amended to replace "said ports" with --said chambers--.

Rejections Under 35 U.S.C. §102(b)

Claims 1, 3, and 5-7 were rejected under 35 U.S.C. §102(b) as being anticipated by Wadsworth, Jr. et al. (U.S. Patent No. 5,399,168). As discussed during the telephonic interview on January 13, 2004, independent claim 1, as originally filed recited, in pertinent part "a housing defining a plurality of interconnected chambers...". Applicants further propose to amend claim

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1 to recite, in relevant part "a housing defining a plurality of interconnected chambers, each said chamber having a bottom portion and sidewall portion and integrated passageway providing interconnection of said chambers...". Applicants believe this amendment further clarifies the interconnected arrangement of the chambers. Support of this amendment may be found, for example, in the paragraph beginning on line 19 of page 8 of the specification as originally filed.

In contrast to the interconnected chambers of the claimed invention, Wadsworth teaches an access port having a "plurality of distinct fluid cavities each in communication with a plural lumen catheter." Field of the Invention, col. 1, l. 20-22. According to the disclosure of Wadsworth, "[a] dividing wall 44 separates fluid cavity 40 from fluid cavity 42." Col. 9, l. 24-25. The "distinct fluid cavities" taught by Wadsworth are placed in communication with a plural lumen catheter via "an outlet stem in which are formed two internal stem channels. These stem channels communicate respectively through individual exit passageways with the fluid cavities." Col. 5, l. 45-48. Additionally, as shown in, e.g., FIGS. 4 and 12, the stem 20 includes a slot 28 extending between the internal stem channels 67 and 67a. The "slot 28 ... corresponds in size and shape to web 76 between lumens 72, 74 of catheter 70." Col. 8, l. 55-57. According to the configuration disclosed by Wadsworth, the "distinct fluid cavities" are provided with separate flow paths to separate respective lumens of a multi-lumen catheter.

In sum, Wadsworth teaches an access port having two or more isolated fluid cavities and respective, isolated fluid passageways, for communicating fluid to respective, isolated lumens of a multi-lumen catheter. However, the independent claim 1 recites that the fluid chambers of the claimed access port are interconnected. Wadsworth does not teach this aspect of the claimed invention. In fact, Wadsworth teaches a contrary configuration.

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Rejections Under 35 U.S.C. §103(a)

Claim 2 was rejected under 35 U.S.C. §103(a) as being obvious over Powers et al. (U.S. 5,833,654) in view of Eliassen et al. (U.S. 6,213,973). As also discussed during the telephonic interview on January 13, 2004, the primary reference in this rejection does not teach interconnected chambers, as recited by independent claim 1, and the Eliassen reference does not remedy this defect.

In a similar manner to Wadsworth, Powers also teaches a dual reservoir access port in which the reservoirs are isolated from each other and are provided with separate flow paths to individual, separate lumens of a multi-lumen catheter. Specifically, Powers teaches a port wherein "[t]he housing further includes a first fluid flow pathway formed in the sidewall of the housing. The first fluid flow pathway extends between the proximal fluid reservoir and a predetermined outlet location at the distal end of the housing. In addition, a second fluid flow pathway extends between the distal fluid reservoir and the predetermined location." Col. 3, l. 1-7. This aspect is most clearly shown in FIG. 6 of Powers.

Also similar to Wadsworth, Powers provides a bifurcated stem in which "[t]he first fluid duct extends longitudinally through the first outlet prong of the outlet stein [sic] to the first fluid flow pathway. The second fluid duct extends longitudinally through the second outlet prong of the outlet stein [sic] to the second fluid flow pathway." Col. 3, l. 15-19. As best shown in FIG. 16, a dual-lumen catheter may be coupled to the bifurcated stem, thereby coupling the individual fluid pathways, and thereby the separate fluid reservoirs, to separate respective lumens.

In view of the foregoing, clearly Powers does not teach an access port having interconnected chambers. In fact, Powers teaches just the opposite: fluid chambers that are purposefully isolated from one another. Therefore, Powers is not even susceptible to being

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modified to achieve the invention of claim 1. Eliassen only discloses an access port having a single fluid reservoir. Therefore, even if the port according to Powers could appropriately be modified, no teaching or suggestion to provide interconnected chambers can be derived from Eliassen.

Claim 4 was rejected under 35 U.S.C. §103(a) as being obvious over Wadsworth, Jr. et al., in view of Powers et al. As discussed above, both Wadsworth and Powers fail to teach an access port having interconnected chamber, as recited by originally filed claim 1. Moreover, both references teach configurations that are inconsistent with the requirements of the claimed invention, i.e., both references teach an access port having at least two fluid reservoirs or cavities that are specifically maintained in isolation relative to one another. Therefore, neither Wadsworth nor Powers are even susceptible to modification in a manner to achieve the claimed invention.

In view of the foregoing, all of the outstanding rejections are believed overcome. The application is therefore believed to be in condition for allowance. After the Examiner has had an opportunity to consider the remarks and proposed amendments herein, Applicant requests another telephonic interview so that this application may be moved to allowance. The attorney of record may be reached at telephone number 603-668-6560.

Respectfully submitted,

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